Communiqué

APRIL, 2004

IN THIS ISSUE:

Hit your Back Button to return to the top of this index.
Return to Home Page

Regular Columns
President's Report ✣ Benchers' Meeting Highlights ✣ From the Equity Ombudsperson ✣ Allan's Odds and Ends ✣ Membership Changes ✣ In Memoriam

Special Features
Interviewing Witnesses ✣ Missed Limitations ✣ Simplified Conveyancing Protocol Forms ✣ Protocol Acceptance Growing ✣ A History of Inkster Christie Hughes ✣ Law Office Searches ✣ Spare Time

Notices to the Profession
Notice of Benchers' Meeting ✣ Insurance Claims Over $1 Million ✣ Speak Now or Forever Hold Your Peace ✣
Cost of Credit Disclosure Legislation ✣ RST on Legal Fees ✣ Interest Rates on Unpaid Fees

PRESIDENT'S REPORT

G. Patrick S. Riley
President

This is my final report to you as President.

I have enjoyed very much my term, and mostly I am sorry to see it end.

Fortunately, I will have a role as Past President which will permit me to taper off my involvement with the Law Society.

That involvement started in 1996 when I was first elected as a Bencher. I ran for election because my partners asked me to.

Also elected for the first time that year were Sid Green, Bill Haight and Al Semchuk. I congratulate them on now becoming Life Benchers, and thank them for 8 years of commitment, service and contribution.

I am sure Bill and Al will not mind if I particularly personally thank Sid for making my time as a Bencher much more interesting than it otherwise would have been.

In fact, I want to thank and congratulate all of the Benchers I worked with over the last eight years. Through your efforts significant improvements have occurred in the Law Society's operations.

These improvements are also due to the actions of our superb staff, ably lead by Allan Fineblit and Marilyn Billinkoff.

There are some challenges in the future.

Lawyers must remain vigilant to avoid erosion of our role as independent protectors of our clients.

We must work to overcome negative perceptions of lawyers which might motivate attacks on our independence.

In this regard, the Society has worked hard to maintain good relations with the provincial government. Allan, Marilyn, Bill Johnston and I had a particularly cordial and productive meeting with Gord MacIntosh in April.

Law libraries will continue to be a challenge for the Society for the foreseeable future. I hope that www.canlii.org, the free virtual law library operated by the law societies of Canada, will continue to flourish and allow us to take back our own law from the commercial publishers.

Of continuing concern will be the issue of under/over supply of lawyers. Two years ago we did not have enough students for available positions. Now we have a number of well qualified students still looking for articling positions. (Contact Brenda Silver for their resumes.) As the baby boomers retire (if they ever do), what impact will this have on the supply of lawyers? Being on the freedom-85 plan, I personally look forward to many years as a member of the Society!

I have been very proud to serve as the Society's President. Thank you all for this opportunity.

Back to TOP

Benchers' Meeting Highlights

Allan Fineblit, Q.C.
Chief Executive Officer

I can't recall a heavier policy agenda in my six years at the Law Society. Our new Lay Bencher Linda Brazier Lamoureux, attending her first meeting, must have wondered what she got herself into. Here is a summary of the policy issues on the agenda of the Benchers' meeting held on April 6, 2004 and what was decided:

Discipline Case Digests

Discipline hearings are open to the public. Case summaries are published and circulated to the legal profession. They are available to the public on request. Now that the Digests are on our

website, should they be moved from the Members Only (password protected) section into the public section? The consensus of the Benchers was that the Digests should be made available to the public on the website.

Pensions

Benchers discussed a concern that some lawyers don't adequately plan for retirement, partly because there is no simple vehicle like a pension plan for most private practitioners. Some Benchers felt the Law Society's public interest mandate warranted consideration of the issue because of the potential for members with diminished capacity (it happens to all of us eventually) to feel the financial need to keep practising beyond the point where it is safe and effective for their clients. Some Benchers felt this might be more appropriate for the CBA, but it was noted that the CBA is not planning anything of this nature except their new RRSP product.

It was noted that, to be effective, the plan might need to be mandatory. None of the Benchers were attracted to that idea. It was also noted that those who need it most may be the ones least likely to participate in a voluntary plan. Finally, it was observed that starting a pension plan could only be of any significant benefit to members who wanted to retire in about 20 years and not those with short-term needs.

The Benchers decided they needed to hear from you. If there is an indication of significant interest from the profession, the Benchers will likely want to explore whether there is a viable, voluntary model that could be developed. [This is your official invitation to speak your mind. If you have strong views in favour or against, let me know and I will pass your feedback on to the Benchers.]

Good Character

Benchers considered the requirement for good character, both in the context of admission and reinstatement. A student entering the Bar Admission Course, a lawyer transferring from another jurisdiction, or a lawyer who has been out of practice for a while and wants to return must demonstrate good character. Guidelines developed by the Admissions and Education Committee create a rebuttable presumption of bad character in certain circumstances (for example, where there is a criminal record) and sets out 15 criteria to be used in considering whether the presumption has been rebutted.

There are a few gaps, however. For example, there is no good character test for students completing their articles and seeking to be called to the Bar. A student with good character who goes bad during their articling year might not be covered by the good character requirement. Similarly, there is no good character test (or any criteria, for that matter) prescribed for disbarred lawyers seeking reinstatement.

The Benchers considered if they wanted to plug these gaps. It was the consensus that the good character issue should be considered in its entirety, including a look at what other law societies do, and whether the criteria continued to be appropriate. The matter was tabled for that purpose.

The Benchers also noted that there were a lot of unnecessary rules about process relating to reinstatement applications and directed staff to prepare rule changes to streamline the process.

Articling Issues

The Benchers talked about two matters, a shortage of articling positions for the articling year about to start and what appears to be the unravelling of the formal matching process of student placement. Some Benchers expressed caution about overreacting to the cyclical ebb and flow of articling jobs and noted that just two years ago the opposite problem (too many jobs and not enough students) was being discussed at the Bencher table. The consensus was that the Law Society should continue to act as a clearing house, helping to link employers with students, and they directed the Law Society staff to consider deferring fees for students entering the new western bar admission course (now called the CPLED course) who haven't yet found articles. The Benchers also directed that we should explore and promote innovative articling models to suit the needs of potential employers.

With respect to the matching process, Benchers were of the view that the Law Society should try and facilitate a process that will allow for the orderly and fair matching of students and employers. It was generally the consensus that Benchers were not at this stage ready to use their regulatory authority to force any particular system and preferred to work with key stakeholders, particularly the MBA Future of Law Committee, to find solutions. Benchers asked to have the matter back on their agenda soon to assess if that approach was working.

Search and Seizure

Benchers approved amendments to the Code of Professional Conduct, including new guidelines for what to do when your law office is subject to a search. These changes arise from recent jurisprudence on the issue. The new guidelines are available on our website.

Pardons

About a year ago Benchers had expressed interest in looking at a model that would permit members with minor disciplinary convictions to expunge their record after the passage of time without any subsequent problems. A possible model was presented for discussion at the April 6th meeting and the conversation focussed on two things: what should be the threshold for expunging the record and what is the effect of it. It was agreed that generally the meaning of expunging a disciplinary conviction should be that the Law Society no longer considers the conviction to reflect adversely on the member's character. That was the easy part!

The Benchers then went through the circumstances where a member's record comes up and considered what specific impact expunging a record would have on those situations. Consensus on that was a bit tougher to find and some Benchers began to wonder if they should scrap the whole idea. In the end the Benchers gave general direction to draft rules permitting a member to apply to have their record expunged, but that the practical effect should be minimal. The record will still be discloseable before the Complaints Investigation and Discipline Committees, for mobility purposes, and for employment and judicial screening. It would, however, give a member the opportunity to clear their name because an expungement would be evidence of the fact that the Law Society no longer considers the conviction to reflect adversely on the member's character.

There was an easier consensus on what the criteria should be: no subsequent convictions; the passage of ten years from the date of conviction; no charges or complaints pending; all outstanding obligations and indebtedness relating to the conviction have been addressed; only available once per member; and only available for cautions or convictions for which the member received a fine or a reprimand.

Border Towns

Benchers considered a request from a member that they develop rules to permit members who practise on the Manitoba/Saskatchewan border to only pay half fees to each law society. The Benchers were of the view that the temporary mobility provisions allowing members to practise up to 100 days a year in Saskatchewan without membership there would address most situations and preferred to have issues of this nature addressed through the National Mobility Agreement process and not on an ad hoc basis.

Back to TOP

Equity Ombudsperson: Corporate Childcare Service for Law Firms

Brenlee Carrington Trepel
Equity Ombudsperson

More than 20 Toronto law firms are currently using an emergency and non-emergency childcare service provider. Will the trend soon make its way to Winnipeg?

The company providing Toronto's hot new corporate daycare is called Kids + Company (www.kidsandcompany.ca).

In an article in the December 19th, 2003 edition of the Lawyer's Weekly, Kids + Company President and CEO Victoria Sopik said that lawyers, support staff and law firms are willing to pay for "daycare insurance and a safe place to park the kids with no fuss or muss."

As a mother of eight, Sopik certainly understands her clientele!

According to an article in Law Times from December, 2003, the service sets out to serve as a sort of insurance policy that ensures children of professional working parents are taken care of if their nanny or babysitter isn't available, or during school PD days, teachers' strikes, and other emergencies.

The Law Times article notes: "In an ideal business world, law firms would include the Kids + Company service as a benefit for all parent lawyers in a firm, suggests Sopik. The fees can serve as an investment into the firm's productivity, with parent lawyers secure in the knowledge their kids are safe and nearby."

According to Jim Middlemiss writing in The Lawyers Weekly, "For $250 a year, a parent is guaranteed 20 emergency day-care slots at one of Kids + Company's daycare clinics, usually located on the main floor of a skyscraper, which provides quick, easy access to lawyers and support staff on their way to work."

"Cassels Brock and Blackwell, LLP, in Toronto, provides the service to its employees, including support staff and non-partner lawyers, as part of their benefits package. " Cassells planned to pay for the service for its staff beginning this year.

The firm's male and female lawyers use the service in equal numbers and are delighted with the option of having a back-up plan for occasions when their regular child-care arrangements fail.

Middlemiss quotes a "University of Guelph study which found that 32 percent of employees actually turned down promotions because of a work-life conflict and that such conflicts lead to higher absenteeism."

The article notes that "given the hourly rate that lawyers charge, the $250 fee amounts to an insurance policy that will save lawyers lost billable hours."

In an article on the company on November 26th, 2003 in The National Post, Sopik was quoted: "When most companies survey their employees about workplace balance or how can we make you want to come back to work after maternity leave, [employees] all talk about having childcare available."

The National Post story also noted: "Employees pay for the full-time care, but Ms Sopik estimates about one-third of her 50-plus business clients cover at least part of the costs of the service, a number that has risen as employers tally up the benefits of helping their staff avert childcare crises."

As for Kids + Company, they're planning to expand their business into other Canadian markets.

Wouldn't it be an attractive idea for an enterprising Winnipeg daycare provider to adopt, or for an enterprising Winnipeg law firm to implement?

Thank you to Sandra Phillips for sending me an article on this subject.

If you'd like to discuss equity in your law office, please contact me. If you'd like to implement a respectful workplace policy, contact me. If you or your office have any discrimination or harassment concerns—I'm here to assist and I can help with mediating a solution. You can call me at 942-2002 or toll free at 1-866-771-2002; e-mail me at brenleecarrington@shaw.ca; or write to me at P.O. Box 2555-Station Main, Winnipeg, R3C 4B3. All contacts are strictly confidential and all service provided is free of charge.

Back to TOP

Allan's Odds and Ends

- Hire a student. It would be a great time because there are lots of very good students who are anxious to work for you. They have a wide range of interests and many would be thrilled to find a job outside of Winnipeg. The Law Society is open to any creative model that makes sense to you. Call Brenda Silver at 926-2024 and she can put you in touch.

- Congrats…

  - to **Harvey Secter** who was re-appointed for another term as Dean of the Faculty of Law at the University of Manitoba;
  - to everyone who had the guts to put their egos aside and run as a Bencher;
  - and as for the rest of you…your job is to have your ballot here by May 4th at 5:00 p.m.… no excuses;
  - to **Joy Cooper** and **Nalini Reddy** who were stars I spotted collecting prizes at the Manitoba Music Festival. They both are putting their talent and energy to work for a good cause (along with 25 other lawyers and judges) in the MBA production of *Little Shop of Horrors*.

- Thank you to **Saul** and **Lawrie Cherniack** for donating an amazing 1911 vintage Winnipeg street atlas that Saul inherited from his dad, Joseph Cherniack. It's on display in the landing at the top of our stairway for you to check out next time you are in the building.

- In the last Communiqué I offered a prize to anyone who could correctly guess the gender of those I quoted on the issue of why women were leaving practice. There were 11 quotes and my goal was to prove that there were no gender-specific opinions on this particular issue at least. In fact, no one got more than eight correct, which is pretty bad considering you had a 50/50 chance. For the record, comments number 1, 2, 3, 7, 8, 9, 10 and 11 were from men.

- I attended a meeting of the Federation of Law Societies' on-line research project (www.canlii.org). CanLII is a huge success and gets better every day. Six thousand new cases are added every month and we expect to soon add some significant collections of hard to find tribunal decisions…and it's free.

- In a previous *Odds and Ends* I mentioned **Jon Van der Krabben's** question about whether Smith Neufeld was the only Manitoba law firm with its own postal code. Thanks to the dozens of you who provided the answer loud and clear. No Jon, you are not unique.

- Thanks to **Lorne Campbell** for sending me the photo below of Manitoba's first Law Reform Committee (circa 1962). Seated (left to right) are Joe Miller, James Doak, Duncan Jessiman, Orville Kay, Sterling Lyon, Gerald Rutherford, Rae Tallin, Montague Israels, Maurice Arpin. Standing (left to right) are Aubrey Hirschfield, Winston Norton, Frank Meighen, Irwin Dorfman, Brian Dickson, Izzy Greenberg, John Scollin, Andy Moffat, Gordon Hall, David Sokolov, George Tallin, Keith Turner, Archie Dewar, Edward Pitblado, Art Mauro, Archie Micay, Lorne Campbell, Vaughan Baird, Roy Gallagher.

Back to TOP

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Non-Practising:
January 26, 2004 Elissa A. Neville

February 14, 2004 Robert M. Hendry
February 26, 2004 Jennefer Nepinak
April 1, 2004 Michael J. Styczen
April 1, 2004 Jennifer A. Faircloth
April 1, 2004 R. Dale Brawn
April 1, 2004 Evelyn M. Braun
April 1, 2004 Jacqueline N. Freedman
April 1, 2004 Alexander J. Forrest
April 1, 2004 Ingrid Lincoln
April 1, 2004 S. Voula Karlaftis
April 1, 2004 Joe Gallagher
April 1, 2004 Randolph B. McNicol
April 1, 2004 Noelia Bernardo
April 1, 2004 Christopher J. Mainella
April 1, 2004 Maria V. Dejaeger
April 1, 2004 Karen M. Dunlop
April 1, 2004 Leonard P. Offrowich
April 1, 2004 Dale W. Fedorchuk
April 1, 2004 Jennifer M. Mann
April 1, 2004 B. Jean McBride
April 1, 2004 Catherine L. Hembroff
April 1, 2004 Elizabeth E.I. Beaupre
April 1, 2004 Estella R.N. Muyinda
April 1, 2004 F. Beverley Padeanu
April 1, 2004 Kenneth E. Andrews
April 1, 2004 Kenneth J. Tyler

Practising to Inactive:
December 1, 2004 Naumaan K. Hameed
January 1, 2004 Kathryn J. Durkin
January 1, 2004 William P. Narvey
January 1, 2004 Lindsay D. Gilroy
January 10, 2004 Mary J. Shariff
February 28, 2004 R. Cory Shangreaux
March 1, 2004 Rene J. Gantzert
March 1, 2004 Michelle A. Sedgwick
April 1, 2004 Bradley D. Blisner
April 1, 2004 David J. Flett
April 1, 2004 Adrian P. Denegar
April 1, 2004 David L. Voechting
April 1, 2004 Harry C. Peters
April 1, 2004 Donald Kruk
April 1, 2004 Christine Van Cauwenberghe
April 5, 2004 Ronald G. Klassen

Non-Practising to Practising:
January 1, 2004 George Tacik
February 1, 2004 Alexandra M.E. Johnson
February 1, 2004 Thomas R.Mooney
February 2, 2004 Valerie J. Smith

February 27, 2004 Melinda D. Murray
March 1, 2004 Leslie S.F. Turner
March 1, 2004 Adrian C.B. McKeown
March 8, 2004 Myfanwy E. Bowman
March 15, 2004 Shelley L. Haner
April 1, 2004 Julie M. Frederickson
April 1, 2004 Monique St. Germain
April 1, 2004 Aliyah Rahaman

Inactive to Practising:
January 1, 2004 J. P. Riley
January 1, 2004 John W. Diamond
January 12, 2004 Dean B. Head
February 1, 2004 Leah F. Craven
February 20, 2004 Jonathan W. McCully
March 15, 2004 Mandy B. Stephenson
March 19, 2004 Laurence J.P. Gillespie
April 1, 2004 Tamara D. McCaffrey
April 1, 2004 Jagjit S. Gill
April 1, 2004 Stacy C. Cawley

Transfer from Another Province:

The following people were called to the Bar of Manitoba and are now entitled to practice law in this jurisdiction, having fulfilled the requirements of Rule 5-14.

February 19, 2004 Nicole D.S. Miller, Law Society of Upper Canada

February 20, 2004 Nancy R. Zettler, Law Society of Upper Canada

Back to TOP

In Memoriam

Joseph Bellan, Q.C., who passed away on December 18, 2003 at the age of 91. Mr. Bellan received his call to the Bar on June 11, 1940 and was admitted as a solicitor on January 19, 1942. Upon receiving his call, Mr. Bellan became a partner in the firm Lindal and Bellan in Beausejour, Manitoba, known today as Bellan, Wasylin & Associates. He practised law in Beausejour for 55 years until his retirement in 1995. Mr. Bellan was appointed Queen's Counsel in December, 1979. He served as a board member of numerous community organizations, including the Beausejour Lions Club, the Royal Canadian Legion and the Brokenhead Agricultural Society.

Walter Dowhan, who passed away on January 19, 2004 at the age of 77. Mr. Dowhan was admitted as a solicitor and received his call to the Bar on October 7, 1952. Upon receiving his call, Mr. Dowhan became a partner in the firm Monnin, Grafton, Deniset & Dowhan. In 1988 he started a new firm with his two children, Louise and Robert, known today as Dowhan & Dowhan. Mr. Dowhan was a practising member of the Law Society at the time of his death. In

October, 2002, Mr. Dowhan was honoured by the Law Society for having practised law for 50 years.

Ben Arthur Shuckett, who passed away on January 20, 2004 at the age of 98. Mr. Shuckett received his call to the Bar on June 4, 1931. He practised law in Winnipeg as a sole practitioner for more than 60 years until his retirement in January of 1996. Mr. Shuckett served on numerous organizations within the Winnipeg Jewish community. He was a founder of the Jewish Child and Family Services, the Jewish Foundation of Manitoba and Past President of the Rosh Pina Synagogue.

Helen Marie Caplap, who passed away on March 17, 2004 at the age of 41. Ms Caplap received her call to the Bar on June 25, 1987. Ms Caplap practised law for four years with the firm, Aikins MacAulay. In 1991 she left law to pursue a career with the Civil Service Commission.

Honourable Madam Justice Claudia Myrna Bowman, who passed away on March 25, 2004 at the age of 71. Madam Justice Bowman received her call to the Bar on March 28, 1966. She began her legal career as a partner with her husband in the firm, Bowman and Bowman, where she practised for 15 years. Madam Justice Bowman served as a part-time judge of the Provincial Court from 1971 to 1977 and in October, 1983 she was appointed a judge of the Court of Queen's Bench, Family Division where she remained until the time of her death. Madam Justice Bowman served as a Bencher of the Law Society of Manitoba from 1978 to 1983 and also served as a lecturer of the Bar Admission Course (Family Law) from 1972 to 1983. In December, 1981 she was appointed Queen's Counsel. During her career in law, Madam Justice Bowman served as a member of the Manitoba Law Reform Commission, Executive Member of the Manitoba Trial Lawyers Association, and also acted as a consultant to the Family Law Review Committee (Manitoba) and the Law Reform Commission of Canada. She also served on numerous community boards, including the Unitarian Church of Winnipeg, Parents Without Partners, the Y.W.C.A. of Winnipeg Advisory Board, the Social Planning Council of Winnipeg, Skills Unlimited, and the Canada Pension Advisory Committee.

Back to TOP

Interviewing Witnesses

C. Kristin Dangerfield
Senior General Counsel

Assume for the moment that you represent the defendant in an action commenced by a corporate plaintiff. The litigation involves both the plaintiff and some of the plaintiff corporation's employees. Prior to filing a statement of defence you would like to interview some of the employees of the plaintiff corporation as part of your investigation into the incidents giving rise to the action. Alternatively you represent a plaintiff who has issued a statement of claim against a government agency. Before proceeding to examinations for discovery, you would like the opportunity to interview the Minister responsible for the agency. In either case, can you do so?

Your conduct in these circumstances is governed by Chapter 9, Commentary 6 of the Code of Professional Conduct, which provides that:

The lawyer may properly seek information from any potential witness (whether under subpoena or not) but should disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way. The lawyer shall not approach or deal with an opposite party who is professionally represented, save through or with the consent of that party's lawyer.

In some instances it is difficult to tell whether one is dealing with a witness (which is proper) or communicating with an opposite party who is legally represented (which is improper). Footnote 17 to the rule provides some clarification in this regard:

The problem may arise where the opposite party is a corporation or government agency. The test suggested is: "Is he likely to be involved in the decision-making process of the party, or does he merely carry out the directions of others?"

The historical basis for the anti-contact rule is to prevent an improvident settlement or a major capitulation of a legal position on the part of a momentarily uncounseled, but otherwise represented party, and to enable the corporation's lawyer to maintain an effective lawyer-client relationship with members of management. In the above scenarios, therefore, while you may in the first case be able to interview some non-management employees of the corporation, in the action against the government agency, interviewing the Minister would not be permissible, absent the consent of the agency's counsel. In circumstances where it is appropriate to interview a witness, you should always disclose your interest in the case.

Back to TOP

Missed Limitations

Tana Christianson
Director of Insurance

Missed limitations continue to be a major cause of insurance claims against lawyers. In the majority of these missed limitation cases, the lawyer knew which limitation period applied and had correctly calculated it. However, when the last day rolled around for doing what was required to be done within the limitation period, the file hadn't come back to the lawyer's attention and the client's rights were lost. Consequences? Lose a client, do not pass go, write a cheque to your insurer for $5,000.00. The truly unfortunate thing about missed limitations is they are easily preventable. A good diarization system, whether it be computerized or on an old-fashioned calendar, is easy to implement. We recommend that you take a moment to review and complete the following survey about your firm's limitation and deadline system. Developing a good system should be a priority. Faithfully using the system once it has been implemented is imperative!

Missed Limitations/Deadlines Survey

1. Does your firm have a system to record limitation dates and deadlines? Is it manual (i.e. diary or cards) or computerized?

2. Apart from any firm system, do you have a personal system to record limitation dates and deadlines? Is it manual or computerized?

3. Does your system cover all types of limitations and deadlines? (e.g. lawsuit commencement under The Limitations Act or The Builders' Lien Act; or document renewal under The Personal Property Security Act; satisfaction or waiver of conditions precedent to an agreement).

4. Do you have a form for initial entry into the system? Who is responsible for the initial entry?

5. Are limitation dates and deadlines noted prominently on the file?

6. Does your system provide for periodic recall in advance of the limitation date or deadline?

7. Does your system include a follow-up procedure to ensure that the responsible lawyer responds within time?

8. Does your system designate an alternate lawyer to respond if the responsible lawyer fails to?

9. Does your system require that, after a limitation date or deadline is met, a new date is entered or it is noted that there are no further dates to be entered?

10. Does your firm have a system which brings forward files which have had no activity for 3 months? 6 months?

Back to TOP

S...plified Conveyancing Protocol Forms

Streamlined forms under the Western Law Societies Conveyancing Protocol mean the Protocol closing procedure is now easier to explain to clients, and simpler to use.

The Power of Attorney form, which empowers the solicitor to correct document defects which would otherwise interfere with the LTO registration process, has now been pared down to its essential elements (in a mere 12 lines plus the affidavits). Practitioners will also appreciate that, since the instrument is no longer framed as an enduring power of attorney, the sometimes-cumbersome requirement of having another notary witness the document can be avoided.

Where a purchaser makes an informed decision to forego obtaining a current building location certificate and sketch, a shortened one-page Acknowledgment form can now be used to document that choice.

The revised forms of Power of Attorney and Acknowledgment, are available on this website (click to download). The Western Law Societies Conveyancing Project is featured under the Member Resources menu. From there, the revised Protocol forms can be downloaded separately or accessed in the main Western Law Societies Conveyancing Protocol document. To request a paper or e-mail copy from the Law Society, call Lana Dixon at 926-2028.

The original forms of Power of Attorney and Acknowledgment under the Protocol continue to be approved for use, and lawyers may encounter circumstances in which the longer forms are still the more appropriate. When the continued health or capacity of a client is at issue, the prudent solicitor might arrange to take an enduring Power of Attorney. As always, either form can be customized to reflect the particular circumstances of the client or the transaction, provided that the essence of the document is preserved. Remember though that, where substantial changes to the Power of Attorney are contemplated, local Land Titles Office officials should be consulted to confirm that the proposed form will suffice for its purposes.

Back to TOP

Protocol Acceptance Growing

The following financial institutions have now adopted "Protocol Closings":

- All Manitoba Credit Unions
- All Saskatchewan Credit Unions
- All Alberta Credit Unions
- Alberta Treasury Branch (ATB Financial)
- Investors Group
- London Life
- Great West Life
- Citi Financial
- Wawanesa
- Canadian Western Bank
- Canadian Western Trust
- ING
- Maple Trust
- Intel Financial Group
- Bayfield Mortgage Corporation
- Bank West

Back to TOP

A History of Inkster Christie Hughes

by John Poyser

The Winnipeg law firm Inkster Christie Hughes recently celebrated its 110th anniversary, tracing its roots through various precursor firms back to Craig and Ross in 1892. Until recently, the firm name changed with its membership. When Barry Hughes, Colin Inkster and Norm Christie each passed away in the two years spanning 2000 and 2002, the firm resolved to leave the name unchanged in their honour. The history of the firm over the last fifty years can be traced through the career paths of those three members.

Joseph Barry Hughes, Q.C., articled with his father, Harley Moody Hughes, K.C., while the firm was known as Hughes, MacLeod, Christie, and was called to the Bar in 1951 at the age of 23. He practised corporate and commercial law. He represented the Manitoba Crop Insurance Corporation for over 45 years. He also had a long history of representing the Manitoba Hog Producers' Marketing Board. Before the advent of word processors, he would often close as many as 20 real estate deals a month. Barry represented some of Manitoba's most successful companies for many decades.

After taking over from his father, he banded his firm together with a collection of his friends from law school, G. Derwood Walker, William C. Irish, and Peter W. A. Westbury, formed Inkster, Walker, Westbury, Irish & Hughes. Later Manly Rusen joined the firm to form Inkster Walker Westbury Irish, Rusen & Hughes. That firm, in turn, became Inkster, Walker, Chornous, after merging with the partners of Pybus, Chornous, Romaniw, Green in 1985. In 1991 the firm merged again, this time with Christie DeGraves MacKay, bringing on board Colon C. Settle, Albert W. Eyolfson, Sharon Tod, and Murdoch MacKay, to form Inkster Christie Hughes MacKay, which evolved into the present firm Inkster Christie Hughes.

Before the inception of legal aid, Barry and a collection of fellow practitioners, including Archie Micay, Bob Smethurst, G. C. Chown, Fraser Campbell, Reeh Taylor, Harry Walsh and W. C. Gardner, formed three committees in the 1950's that offered free legal services at night. Barry quietly carried on the tradition of pro bono service throughout the balance of his career. A plaque hangs to recognize his pro bono contribution to the Riverside Lions Non-Profit Housing Inc.

Colin Lloyd Inkster articled to William Walker Kennedy of the law firm Kennedy & Kennedy and was called to the Bar on August 18, 1949. He joined Harley Hughes in 1950 while Barry Hughes was articling in the same office. During that same year, Colin, together with other members of the firm worked tirelessly alongside Army and Navy Reserve members in the fight of the "Great Flood" of 1950, dividing his time between law and sandbagging.

Colin came to focus his practice almost entirely on transport law. He became known as one of the preeminent specialists in Canada in that area, and served many of Canada's largest transport companies.

Norman Clague Christie, Q.C., articled in 1946 to Harley Hughes. He went out on his own and first became partners with David Bowles, with Bowles Christie, and was later joined at that firm by Sterling Lyon in 1957. Murdoch MacKay joined the firm in 1959 followed by other notables such as Wilfred DeGraves, Colon C. Settle, Dan Kennedy, Keith Turner, Michael Phelps, David Unruh, Gavin Wood, Blair Graham, and Rick Lee. The firm amalgamated with Inkster, Walker, Chornous. That last amalgamation was the last major structural change to the firm and it has, since then, continued by and large in its current form.

Norm began his career as a litigator but switched to commercial and corporate law, conveyancing, and estate work. His corporate and estate work was appreciated beyond the

borders of Manitoba, and he was retained by the famed Stanfield family of Nova Scotia for certain matters. His clients included Canadian Acceptance Corp., Redisco, Bank of Montreal, Household Finance and the Household Group of Companies, Guarantee Trust and Equitable Trust. Norm received his Queen's Counsel in 1964. He taught bar admission courses, was a Bencher of the Law Society of Manitoba from 1968 to 1971, and served on the Discipline committee among others.

The firm was housed for much of this time in a building on Kennedy Street constructed and owned by members of the partnership. The firm moved out of those premises in June of 1984 after a fire. Fire damaged books still grace the library. That same building is the one currently occupied by the Law Society.

Barry Hughes, Colin Inkster and Norm Christie were part of a tradition, spanning many decades back into the firm history, of getting together in the boardroom every Friday afternoon to share a martini. That tradition, much restrained, continues to this day.

Back to TOP

Law Office Searches

C. Kristin Dangerfield
Senior General Counsel

What should you do when a law enforcement agency attends at your office with a warrant seeking evidence relating to one or more of your clients? Such a search may have grave implications for solicitor - client privilege, and as such you must be adequately prepared to take the steps necessary to preserve that privilege. It is your professional obligation to do so by virtue of Chapter 8 of the Code of Professional Conduct which requires lawyers to:

"be alert to claim on behalf of clients any lawful privilege respecting information about their affairs, including their files and property if seized or attempted to be seized by a third party. In this regard the lawyer should be familiar with the nature of clients' privilege, and with relevant statutory provisions such as those in the Income Tax Act, the Criminal Code, the Canadian Charter of Rights and Freedoms and other statutes."

The process for law office searches and seizures pursuant to Federal legislation was codified by section 488.1 of the Criminal Code, a section that was struck down in 2002 by the Supreme Court of Canada in Lavalee, Rackel and Heintz v. Canada (Attorney General). Law office searches and seizures will nonetheless continue. In order to assist you to identify the extent of your professional obligations, the Practice and Ethics Committee of The Law Society of Manitoba has developed Search and Seizure Guidelines. The Guidelines outline the common law principles that govern the legality of searches of law offices as identified in Lavalee, and provide you with some practical advice and direction.

The Guidelines are available on this site (Click to download). Paper copies of the Guidelines may be requested by contacting Molly Morris, Office Manager at mmorris@lawsociety.mb.ca or at 926-2018. Please review them carefully. Remember, it is your responsibility to protect your

clients' interests.

Back to TOP

Spare Time

Allan Fineblit, Q.C.
Chief Executive Officer

I recently visited a couple of my pals in Brandon (I left Vice President Bill Johnston off my social schedule since he already sees more of me than he cares to). Those of you who grew up believing the north end "Mafia" rules the world, should take note that it's the Brandon Mafia that rules the legal profession. **Bill Johnston** will soon be the Law Society President, **Brian Midwinter** just finished his term as President of the MBA, **Irene Hamilton** (the ADM running Manitoba Courts) is a Brandon export as is Law Society General Counsel **Kris Dangerfield**. My wife recently attended a Brandon "girls" reunion (women who went to high school there in the '60s) and was entertained by the song stylings of Bobby Curtola, who believe it or not, lives in Brandon as well.

My first visit was with **Brent Mills**, formerly of Meighen, Haddad (or "Me and My Dad" as it is affectionately known in honour of the three generations of Meighens that have worked there). Brent is now the President of Assiniboine Community College. His driveway is currently occupied by a building that I took to be a parking attendant's booth (one of the perks of being a high-powered executive), but Brent tells me that it is actually a bunkhouse he built to move to his acreage near Riding Mountain National Park. He plans to stay in it while he builds a cottage. I formed the impression that this might turn out to be a long-term project, inspired perhaps by the fact that Brent and his wife are now almost empty nesters and in spite of their busy careers, may actually foresee having some free time on their hands.

My second visit was to Judge **Brian Giesbrecht**'s home on the range just outside of Brandon, where he keeps a large assortment of dogs and cats, two horses and a donkey. We had a short visit because Brian was off to see Long John Baldry (see the Bencher Highlights discussion about people overdue for retirement…I'm talking about Long John, not Brian). Is Brandon really big enough for both Bobby Curtola and Long John Baldry? I was impressed with the range of Brian's interests from preservation of prairie grasses, to old fogey music, to cross-country skiing.

Maybe it was the discussion at the Benchers meeting, but lately I've had retirement on my brain. Now don't be sending any resumes, it's not happening any time soon. The other day, when I was ferrying kids from soccer to basketball, talking on my cell phone and eating a slice of pizza (don't try this at home kids, I am a professional), I wondered how I would fill all that empty time when the day comes that I have no kids to drive and no Law Society business to muck around with?

My father-in-law is my retirement role model. When he retired from a busy medical practice, he fulfilled his lifelong dream and became a farmer. He set up a wonderful saskatoon u-pick that provided gainful employment to multiple grandchildren for several summers until he decided that he had spent enough of his children's inheritance and moved on to new adventures. Financial

planning for retirement is certainly important. *(By the way, remember that if you have any thoughts on a Law Society sponsored pension plan, you are going to tell me about them.)* But retirement planning is also about planning for the fun you want to have after the clients, the billable hours, and the Law Society auditors are all just pleasant memories. Me? When the time comes I'm retiring to Brandon. The Brandon mafia made me an offer I can't refuse.

Back to TOP

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, May 20, 2004 at 12:30 p.m.** in the Society's classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

Back to TOP

Insurance Claims Over $1 Million

All Insured lawyers in the Province of Manitoba have mandatory insurance coverage of $1 million. However, claims can exceed $1 million. Lawyers and law firms without excess insurance have to satisfy any claims over $1 Million out of their own pockets. Also, the $1 million mandatory coverage includes damages and defence costs, so legal fees spent on behalf of the Insured lawyer erode those limits.

It is no longer an unusual event to see a Statement of Claim against a lawyer claim well in excess of $1 Million. In other Canadian jurisdictions, it has become routine to pay out claims of this magnitude. Therefore, we encourage every firm to think about to what extent the firm members want to be personally exposed.

Excess coverage can be purchased through the Canadian Lawyers Insurance Association (CLIA) in amounts from $1 to $9 Million in excess of the $1 Million mandatory insurance. CLIA's rate structure and applications are available from the Professional Liability Claims Fund Department of The Law Society of Manitoba. Other excess insurance can also be purchased through local brokers.

If you have any questions about excess insurance, please contact Bonnie Harvey or Tana Christianson of the Professional Liability Claims Fund.

Tana Christianson 926-2011
Bonnie Harvey 926-2026

Back to TOP

Speak Now or Forever Hold Your Peace

If you know of any circumstances which might possibly, at some point in the future, give rise to an insurance claim against you and you want coverage under your Insurance Policy, then you must report those circumstances to the Law Society's Professional Liability Claims Fund staff before the end of June.

The current Lawyers Professional Liability Insurance Policy runs from July 1, 2003 to July 1, 2004, as does the CLIA Excess Policy of Insurance and many other excess policies. Lawyers' liability insurance policies are written on a claims made basis. Section 4.2 of our Policy provides coverage for claims made during the policy period, provided that the Insured had no knowledge before commencement of the policy period of the claim or potential claim and could not reasonably have foreseen before commencement of the policy period that a claim might arise. Therefore, if you have knowledge of a problem or are concerned about a file now, you should be putting the Professional Liability Claims Fund staff on notice before this policy year runs out on July 1, 2004. Claims Fund staff can be reached at:

Tana Christianson 926-2011
Kate Craton 926-2012
Louise Ritchie 926-2021
Bonnie Harvey 926-2026

Back to TOP

Cost of Credit Disclosure Legislation

Cost of credit disclosure legislation is under review in Manitoba. The purpose of the review is to consult with stakeholders on possible changes intended to harmonize legislation with jurisdictions across the country and to modernize consumer protection law regarding disclosure of the cost of credit.

The Consumers' Bureau has prepared a discussion paper summarizing changes under consideration that relate to consumer credit under two Manitoba laws, The Consumer Protection Act and The Mortgage Act. The changes would impact consumers, retailers, credit grantors and their assignees, lessors, mortgagees, advertisers, and brokers.

If you'd like to see the paper and provide input, it is available from the Consumers' Bureau or online at www.gov.mb.ca/finance/cca/consumb.

Back to TOP

Important Notice Re: RST on Legal Fees

The Manitoba Budget announced that effective July 1, 2004 retail sales tax will apply to most legal services. Law firms must register by May 20, 2004. Application forms are available by calling 945-5603 or 1-800-782-0312. Forms and information are available from the taxation branch website: www.gov.mb.ca/finance/taxation. Legal services are discussed in draft information bulletin No. 056 available from the website or the numbers above. The Law Society will be meeting with finance officials to provide input on implementation issues. We also are planning an education program to assist members to understand and manage this new obligation. Stay tuned.

Back to TOP

Interest Rates on Unpaid Fees

Pursuant to Rule 5-57 of the Rules of the Law Society of Manitoba,, a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the Income Tax Act (Canada) on the date the bill is delivered. The interest rate effective for the period April 1, 2004 to June 30, 2004 is 7%.

Back to TOP

COMMUNIQUÉ BACK ISSUES

January, 2004
September, 2003
May, 2003
January, 2003
September, 2002
May, 2002
February, 2002
November 2001
July 2001
December 2000
September 2000
May 2000
January 2000
October 1999
May 1999
January 1999
September 1998
May 1998